

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Jesse J. McNabb	:	
	:	
-vs-	:	04-0544
	:	(Rehearing)
The Peoples Gas Light and Coke Company	:	
	:	
Complaint as to billing/charges in Chicago, Illinois.	:	

**RESPONDENT’S REPLY TO COMPLAINANT’S RESPONSE TO
RESPONDENT’S MOTION FOR INVOLUNTARY DISMISSAL OF
COMPLAINT AND PETITION FOR REHEARING**

Now comes the Respondent, The Peoples Gas Light and Coke Company (“Peoples Gas”), by and through its attorney, Mark Goldstein, and files the Respondent’s Reply to Complainant’s Response to Respondent’s Motion for Involuntary Dismissal of Complaint and Petition for Rehearing.

BACKGROUND

On November 7, 2005, Peoples Gas filed its Motion for Involuntary Dismissal of the Complaint and Petition for Rehearing (“Motion to Dismiss”). Peoples Gas relied upon the clear and plain language set forth in Section 10-113(a) of the Public Utilities Act (220 ILCS 5/10-113), which states, in relevant part, as follows: “... or (the Commission) shall fail to enter a final order upon the rehearing within 150 days after such rehearing is granted, the application shall be deemed to be denied and finally disposed of, and an order to that effect shall be deemed to have been served, for the purpose of an appeal from the ...order or decision covered by such application.” No language could be clearer. Once 150 days had passed and the Illinois Commerce Commission (“Commission”) did not issue a final order, it lost jurisdiction over the

captioned matter. The intent of the Illinois legislature is quite clear that once the 150 day rehearing period has passed and no final order has been issued by the Commission, the Commission jurisdiction over this complaint is forever lost and the Complainant, Jesse J. McNabb, had to seek redress by an appeal of the initial Order entered by the Commission on April 6, 2005, denying his complaint.

Moreover, additional language in Section 10-113(a) makes it even clearer that the Illinois legislature intended prompt action when the Commission granted rehearing by including the following language: “In case the application for rehearing is granted in whole or in part the Commission shall proceed as promptly as possible to consider such rehearing as allowed.”

If this were not enough, Peoples Gas cited a case directly on point, Liberty Trucking Co. v. Illinois Commerce Comm’n, 81 Ill. App. 3d 466, 401 N.E. 2d 581 (1980) to support its Motion to Dismiss and provided a copy of the decision as an attachment to the Motion to Dismiss. The Appellate Court in Liberty Trucking discussed the rehearing procedure as part of an orderly plan set up by the legislature for judicial review of Commission rulings. In Liberty Trucking, the Appellate Court noted: “To insure a prompt disposition of cases and to provide some degree of finality and regularity in the administrative processes, this section (old Section 67 of the Public Utilities Act, now Section 10-113) establishes a time frame within which both the litigant and the Commission must act in rehearing matters.” (See: 81 Ill. App. 3d 466, 470) (Emphasis supplied). The Appellate Court concluded, as follows: “Although there are no decisions on point, the need to preserve stability in the regulatory process prompts us to conclude that the Commission is also without authority to enter an order on rehearing after the

petition is considered denied by operation of law or more than 150 days after a rehearing has been granted. In this case, the Commission failed to act on Liberty's petition within 150 days and was thereafter without authority to enter an order on rehearing." (Id. 470)

Against this background, the Complainant filed his Response to the Motion to Dismiss. In his Response, the Complainant concludes either that the Commission did not lose jurisdiction after the 150-day rehearing period, or that the Commission should reopen these proceedings. As set forth in the Argument section of this Reply that follows, the Complainant has failed to allege any legal basis for either conclusion.

ARGUMENT

1. Pursuant to Section 10-113, the Commission lost jurisdiction over this Complaint on October 21, 2005.

In his Response, pages 3-5, the Complainant contends that the Commission did not lose jurisdiction over the Complaint and the Petition for Rehearing on October 21, 2005. Complainant cites two lead cases in support of his contention that 1) the legislature is presumed not to have intended an absurdity or injustice (Halberstadt v. Harris Trust & Savings Bank ("Halberstadt"), 55 Ill. 2d 121, 302 N.E. 2d 64 (1973); and 2) the legislature intended to allow the Commission to remedy any errors while it has full control of the matter making an appeal unnecessary (Meinhardt Cartage Co. v. Illinois Commerce Commission ("Meinhardt"), 15 Ill. 2d 546, 155 N.E. 2d 631 (1959)). Several points should be made regarding these cases. First, neither case discusses the 150-day rehearing rule pursuant to Section 10-113, or any predecessor section of the Public Utilities Act. Second, these cases are inapposite, completely distinguishable and entirely irrelevant to the instant case and not in any way on point to the rehearing issue. In the Halberstadt decision, the Supreme Court allowed an amendment of pleadings after the

statute of limitations had run because the initial pleadings were timely filed in accordance with the now Illinois Code of Civil Procedure and the “Civil Practice Act” does not govern proceedings before the Commission. The Halberstadt decision required an interpretation of the Structural Work Act, not the Public Utilities Act. It is also interesting to note that in the Halberstadt decision, there is no mention of the term “absurdity and injustice.” The Meinhardt decision involved the Commission’s review of freight rates. The Supreme Court reversed the circuit court order in Adams County because the Circuit Court considered an issue not raised in the petition for rehearing filed before the Commission. This obviously has nothing to do with the tolling of the 150-day rehearing period. Moreover, while the Commission has, through the rehearing process, the ability to correct any perceived errors in an Order on Rehearing, it must do so within the 150 days from the date it grants the rehearing.

Third, the Complainant failed to provide any direct quotes from these cases in support of its contention that the Commission did not lose jurisdiction over this Complaint on October 21, 2005. Fourth, there is no indication in the Commission’s Order granting rehearing that the rehearing was granted to correct any errors. Fifth, the terms “absurdity” and “injustice” are merely catch phrases wherein the Complainant seeks some type of equitable relief; however, the Commission’s loss of jurisdiction pursuant to the 150-day rehearing rule is not an equitable issue, but an issue of statutory requirement pursuant to Section 10-113 to resolve Commission cases in a timely manner. Sixth, Complainant’s due process argument, like its “injustice and absurdity” argument is another “red herring” tossed into the Response without it being a real issue for consideration under the 150-day rehearing rule.

Finally, Respondent could not raise the 150-day rehearing rule until after October 21, 2005. Respondent was not obligated to inform Complainant's counsel of the 150-day rehearing rule and the Respondent cannot waive this statutory requirement.

2. The Commission cannot grant reopening as requested by the Complainant.

On pages 5 and 6 of the Response, the Complainant requests that the Commission reopen these proceedings pursuant to 83 Ill. Adm. Code 200.900. This Complainant request wrongfully presupposes that the Commission still has jurisdiction over the Complaint. As the Respondent has clearly demonstrated, the Commission lost jurisdiction on October 21, 2005 pursuant to Section 10-113 and the applicable law as enunciated in the Liberty Trucking case.

In support of its reopening request, the Complainant cites the cases of Illinois Power & Light Corp. v. Commerce Commission ("IP case"), 320 Ill. 427, 151 N. E. 236 (1926) and Rockwell Lime Co. v. Commerce Commission, 373 Ill. 309, 26 N.E. 2d 99 (1940). Again, like previous cases cited in the Response, the facts and law are clearly distinguishable from the instant case. Without discussing the facts of the IP case, the Supreme Court merely found that the Commission is not a judicial tribunal and its orders are not judgments which are *res judicata*. This determination is irrelevant to the issue of whether this Commission lost jurisdiction over this complaint on October 21, 2005 and thus cannot reopen these proceedings.

The issue in these proceedings is not whether an order of the Commission can be changed as conditions change, but whether the Commission lost jurisdiction on October 21, 2005. The law is clear that the Commission lost jurisdiction. In a similar manner, the Commission cannot extend the 30-day time period for filing a rehearing cannot be

extended either by the parties or the Commission because it is a statutory requirement. Salon Trucking Co., Inc. v. Illinois Commerce Commission, 84 Ill. App. 3d 604, 406 N.E. 2d (1st Dist. 1980).

CONCLUSION

The Complainant has tried to dodge the real issue raised by the Respondent in the Motion for Involuntary Dismissal of Complaint and Petition for Rehearing. The real issue is whether the Commission lost jurisdiction over these proceedings on October 21, 2005 pursuant to Section 10-113 and the Liberty Trucking decision. It is clear that the Commission lost jurisdiction over these proceedings at the end of the 150-day rehearing period. No action by the Complainant, the Respondent or the Commission can revive these proceedings. Complainant's request to reopen the proceedings, if granted, would be a grave miscarriage of justice and contrary to law.

WHEREFORE, Respondent, The Peoples Gas Light and Coke Company respectfully requests that the Illinois Commerce Commission enter an order dismissing this Complaint pursuant to 220 ILCS 5/10-113 based upon a lack of jurisdiction.

Respectfully submitted,
The Peoples Gas Light and Coke Company

By: _____
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Dated: November 23, 2005

CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2005, I served a copy of the attached Respondent's Reply to Complainant's Response to Respondent's Motion for Involuntary Dismissal of Complaint and Petition for Rehearing by e-mail and U.S. Mail, first class mail as indicated below, to each of the parties indicated below:

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